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C O N F I D E N T I A L SECTION 01 OF 03 ABUJA 002329

SIPDIS

STATE FOR AF/FO, AF/W, AF/RSA, DRL, INR/AA;

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TAGS: [PGOV](#) [PREL](#) [PINR](#) [NI](#)

SUBJECT: DEADLINES LOOM FOR NIGERIAN PRESIDENTIAL ACTION

REF: A. ABUJA 2306

[1](#)B. ABUJA 2294

[1](#)C. ABUJA 2276

[1](#)D. ABUJA 2272

Classified By: Acting Deputy Chief of Mission James P. McNulty  
for reasons in sections 1.4 (b) and (d).

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SUMMARY  
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[1](#)1. (C) At least two deadlines requiring Presidential action loom for Nigeria's executive branch on activities affecting the interests of the country's legislative and judicial branches. One involves the signing of a budget supplemental bill to provide funding for major, Niger Delta post-amnesty infrastructure projects, while the other involves the swearing-in of Nigeria's new Supreme Court Chief Justice Aloysius Katsina-Alu. While the Nigerian Government (GON) has managed to muddle through most end-of-year activities (Ref A), managing these two approaching deadlines will require some creativity and finesse. END SUMMARY.

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BILL LANGUISHES IN PRESIDENT'S ABSENCE  
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[1](#)2. (C) House of Representatives Deputy Speaker Usman Bayero Nadafa told PolCouns and PolOff December 21 that the President or Acting President must "soon" sign the Budget Supplemental Appropriation Bill sent to the President's Office about three weeks earlier. Nadafa expressed concern that a "power vacuum" created by the President's absence would allow the bill to languish for more than 30 days, at which time it would undergo an automatic veto. The bill contains funding for major, post-amnesty Niger Delta infrastructure projects, according to Presidential Advisor Sani Musa and the media.

[1](#)3. (SBU) One option publicly discussed in the media to circumvent the automatic veto would involve asking the National Assembly to over-ride the veto by approving the measure again with support from at least two-thirds of its members. According to the press, the House passed the measure November 18, while the Senate gave its assent November 23 or 24. House of Representatives Rules and Business Committee Chairperson Ita Enang told the press that National Assembly leaders usually added a five-day grace period before transmitting approved bills to the Presidency for signature, calculating that the signing deadline for this bill would therefore be December 29. (COMMENT: The National

Assembly remains on holiday recess until January 12, 2010.  
Thus, no attempt at an over-ride, if needed and sought, would  
occur before that date. END COMMENT.)

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NO LETTER YET FROM THE PRESIDENT  
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14. (C) Deputy Speaker Nadafa insisted to PolCouns and PolOff  
that the National Assembly had not received a letter from  
President Yar'Adua officially handing over responsibilities  
to the Vice President as Acting President. He privately  
confided his doubts over the accuracy of continued, official  
reports that the President was responding to medical  
treatment. During a previous hospital stay in Saudi Arabia,  
he explained, Yar'Adua had submitted to BBC Hausa Service  
radio interviews, demonstrating that he remained alive and  
lucid. Nadafa, nonetheless, insisted that the Constitution's  
section five, which vests executive powers in the President  
and allows him to delegate responsibilities to the Vice  
President, does not require that such delegation occur in  
writing. Nadafa asserted that Yar'Adua could verbally  
communicate such instructions directly to the Vice President  
by telephone, if necessary.

15. (C) Presidential Advisor Sani Musa told PolCouns December  
22 that the Senior Advisor on Legislative Affairs had  
"withheld" the President's letter from the National Assembly.  
(COMMENT: Embassy heard from the Attorney General recently  
that the Senior Advisor on Legislative Affairs had withheld  
such a letter during a previous trip by Yar'Adua to Saudi

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Arabia -- Ref B. Musa's comment could have referred either  
to the current trip or the previous one. END COMMENT.) Musa  
insisted that the Deputy Speaker had incorrectly described  
the Constitutional requirement, noting that the President  
must send a written letter to the National Assembly to hand  
over powers to the Vice President. He lamented lack of  
continuity among legislators, which, he said, resulted in  
less understanding of constitutional requirements. (COMMENT:  
Section 145 of the Constitution requires a "written  
declaration" for a formal hand-over, while Section 5  
discusses more generally the day-to-day exercise of executive  
powers. END COMMENT.)

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POSSIBLE INCAPACITY  
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16. (C) Musa commented that, even if President Yar'Adua  
returned to Nigeria soon, he would likely remain too weak to  
perform his duties. Expressing concern over the perception  
that the country's government machinery lacked an official  
leader, he declared that the administration "must act by the  
end of the year" to designate Vice President Jonathan as  
Acting President, if Yar'Adua did not return by then. As for  
invoking "incapacity" of the President, if such a situation  
arose, Musa indicated that the Federal Executive Council  
(FEC) appeared unlikely to take such a decision, given that  
all Cabinet Ministers, who comprise the FEC, owed their  
current status to the President. (COMMENT: Section 144 of  
the 1999 Constitution provides for removal of the President  
or Vice President for "permanent incapacity" when two-thirds  
of the FEC members approve a resolution declaring the  
incumbent "incapable of discharging the functions of his  
office," a medical panel verifies such declaration, and the  
panel's notice, signed by the Senate President and House  
Speaker, appears in the official Gazette. END COMMENT.)

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VICE PRESIDENTIAL SWEEPSTAKES  
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17. (C) Musa mentioned various Northern leaders as potential

contenders for the Vice Presidency, should Jonathan ascend to the Presidency, including Central Bank Governor Lamido Sanusi, Senate Foreign Relations Committee Chairperson Jibril Mohammed Aminu, Secretary to the Government of the Federation (SGF) Mahmud Ayale Ahmed, former National Security Advisor (NSA) retired General Aliyu Mohammed Gusau, and Nigerian Ambassador to South Africa Buba Marwa. Musa expressed considerable admiration for Sanusi, whom he described as a man of "integrity" who has acted forcefully during his tenure against mismanaged banks, in contrast to his predecessor Chukwuma Soludo (now the national ruling party's candidate for governor of Anambra). He dismissed Sanusi's denial of interest in the Presidency in a recent press interview, noting that Sanusi had to dampen speculation to avoid appearing presumptuous. Political leaders, Musa said, feared that President Yar'Adua, should he miraculously return to his duties, would fire those who had dared to accrue too much power during his absence (COMMENT: as occurred with the previous SGF. END COMMENT.) He also described current SGF Ahmed as a capable person, who has served as executive branch's number three official behind the Vice President and ahead of the Cabinet Ministers. Qahead of the Cabinet Ministers.

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ONLY TWO ACTS ENACTED THUS FAR  
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18. (C) The Deputy Speaker claimed to PolCouns and PolOff that the House had approved 35 bills to date in 2009 but that delayed action by the Senate had reduced overall approvals to "not more than 20." "Draftbill Magazine" Editor Fatima Mohammed, who closely follows the progress of legislation, told PolOff December 22 that only two acts had yet gained enactment (i.e., including signing by the President) into law this year -- the Appropriation and Federal Capital Territory Appropriation Acts. (COMMENT: Even without the added complication of the President's absence, the National Assembly's productivity -- in terms of approved legislation -- remains quite low for this year. END COMMENT.)

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SWEARING-IN OF CHIEF JUSTICE

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19. (C) The other action looming on the horizon for presidential action, this time affecting the judicial branch, involves the swearing-in of the country's Chief Justice Katsina-Alu, scheduled for the end of December. Only the President, or Acting President, has the power to administer the oath of office, as noted by former Chief Justice Mohammed Lawal Uwais recently to Embassy (Ref A).

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COMMENT  
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110. (C) Satisfying these two approaching deadlines will require executive branch creativity, given that these two activities affect the interests of the two other branches of government. We do not yet predict a constitutional crisis over the President's health, as the GON will likely continue to muddle through the end-of-year holiday season. Resorting to less than optimal measures, such as a National Assembly over-ride of an automatic veto or a delay in the Chief Justice's swearing-in, should they become necessary, may ultimately convince the President's inner circle that the time has passed for designating the Vice President as Acting President. In the meantime, the constant official refrain that the President has responded to medical treatment in Saudi Arabia has begun to ring increasingly hollow -- not just with the House Deputy Speaker, but with the public in general -- as President Yar'Adua remains absent from the country and apparently unable to sign legislation or even

participate in a staged media event from his hospital room.  
END COMMENT.

¶11. (U) Embassy coordinated this telegram with ConGen Lagos.

SANDERS